IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of
DECLAN PATRICK KELLY

Atty. Docket
NL 031264

Confirmation No. 3750

Serial No. 10/575,426

Group Art Unit: 2621

Filed: APRIL 10, 2006

Examiner: HARVEY, DAVID E.

Title: PLAYBACK DEVICE AND METHOD FOR PROVIDING FUNCTIONALITY
         BASED ON EVENT INFORMATION RETRIEVED FROM A PLAYLIST

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APPEAL BRIEF

Sir:

Appellant herewith respectfully presents a Brief on Appeal as follows, where a

Notice of Appeal is concurrently filed:

REAL PARTY IN INTEREST

The real party in interest in this appeal is the assignee of record Koninklijke Philips Electronics N.V., a corporation of The Netherlands having an office and a place of business at Groenewoudseweg 1, Eindhoven, Netherlands 5621 BA.

RELATED APPEALS AND INTERFERENCES

Appellant and the undersigned attorney are not aware of any other appeals or interferences which will directly affect or be directly affected by or having a bearing on the Board's decision in the pending appeal.

STATUS OF CLAIMS

Claims 1, 3-7, 9-10 and 13-24 are pending in this application, where claims 2, 8 and 11-12 are canceled. Claims 1, 3-7, 9-10 and 13-24 are rejected in the Final Office Action mailed on December 10, 2009. Claims 1, 3-7, 9-10 and 13-24 are the subject of this appeal.

STATUS OF AMENDMENTS

Appellant did not file a Response to a Final Office Action mailed December 10, 2009. This Appeal Brief is in response to the Final Office Action mailed December 10, 2009, that finally rejected claims 1, 3-7, 9-10 and 13-24.

SUMMARY OF THE CLAIMED SUBJECT MATTER

The present invention, for example, as recited in independent claim 1, shown in FIG 1, and described on page 1, line 23, to page 6, line 16; and page 6, line 29, to page 7, line 17 of the specification, is directed to a playback device 2 for retrieving a data stream comprising video data. The playback device 1 comprises a processor 4 configured to receive event information from a playlist of the data stream; and an application for providing functionality associated with the event information. The playlist is not included in the data stream, and the event information is changeable without changing the data stream.

The present invention, for example, as recited in independent claim 9, shown in FIG 1-4, and described on page 1, line 23, to page 6, line 16; and page 6, line 29, to page 7, line 17 of the specification, is directed to a method for processing a data stream and event information associated with the data stream. The method comprises starting playback of the data stream comprising video information or audio information; retrieving by a processor the event information from a playlist of the data stream; and providing the event information to an application for providing functionality associated with the event information. The playlist is not included in the data stream, and the event information is changeable without changing the data stream.

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Whether claim 1 of U.S. Patent Application Serial No. 10/575,426 is unpatentable under 35 U.S.C. §103(a) over Applicant's Admitted Prior Art as set forth in lines 1-20 on page 1 of the present Application (AAPA) in view of U.S. Patent Application Publication No. 2003/0189668 (Newnam).

Whether claims 3-7, 13-17 and 19-20 of U.S. Patent Application Serial No. 10/575,426 are unpatentable under 35 U.S.C. §103(a) over AAPA in view of Newnam.

Whether claim 9 of U.S. Patent Application Serial No. 10/575,426 is unpatentable under 35 U.S.C. §103(a) over AAPA in view of Newnam.

Whether claim 10 of U.S. Patent Application Serial No. 10/575,426 is unpatentable under 35 U.S.C. §103(a) over AAPA in view of Newnam.

Whether claims 22 and 23 of U.S. Patent Application Serial No. 10/575,426 are unpatentable under 35 U.S.C. §103(a) over AAPA in view of Newnam.

Whether claim 18 of U.S. Patent Application Serial No. 10/575,426 is unpatentable under 35 U.S.C. §103(a) over AAPA in view of Newnam.

Whether claim 21 of U.S. Patent Application Serial No. 10/575,426 is unpatentable under 35 U.S.C. §103(a) over AAPA in view of Newnam.

Whether claim 24 of U.S. Patent Application Serial No. 10/575,426 is unpatentable under 35 U.S.C. §103(a) over AAPA in view of Newnam.

ARGUMENT

Claim 1 is said to be unpatentable under 35 U.S.C. §103(a) over AAPA and Newnam.

Appellant respectfully requests the Board to address the patentability of independent claims 1 and 9 and further claims 3-7, 10 and 13-24 as depending from claims 1 and 9, based on the requirements of independent claims 1 and 9. This position is provided for the specific and stated purpose of simplifying the current issues on appeal. However, Appellant herein specifically reserves the right to argue and address the patentability of claims 3-7, 10 and 13-24 at a later date should the separately patentable subject matter of claims 3-7, 10 and 13-24 later become an issue. Accordingly, this limitation of the subject matter presented for appeal herein, specifically limited to discussions of the patentability of claims 1 and 9 is not intended as a waiver of Appellant's right to argue the patentability of the further claims and claim elements at that later time.

AAPA, namely, page 1, lines 1-20 of the present Application describes a conventional playback device for playing back a video stream, such as a set top box that includes a processor for processing a java application. The java application receives an event **from the video stream**. As correctly noted on page 2, item 2.B of the Final Office Action, AAPA does not disclose or suggest receiving any event information **from a playlist** of the data stream. Newnam is cited in an attempt to remedy the deficiencies in AAPA.

Newnam is directed to a synchronization system for coordinating interactive content provided in a broadcast signal of an interactive television (ITV) program. As specifically

recited in paragraph [0009] of Newnam, the Newnam system is concerned with automation

of "**insertion** of interactive content or triggers **into** the broadcast **stream** at the appropriate

time as it is broadcast." (Newnam, paragraph [0009], lines 5-6; emphasis added) Thus,

any playback device, such as a television (TV) or set top box that receives the broadcast

for playback thereof, receives a stream having triggers or events **inserted** therein. Thus,

any playback device receiving such a stream with inserted events, will receive the event or

trigger **from the video stream**, exactly as described in AAPA.

In Newnam, information from a playlist is <u>not retrieved by the playback device</u>, but

rather such information is <u>retrieved by ITV system</u> to incorporate ITV content **in** the TV

content. That is, Newnam is concerned with automating synchronization between ITV

content (from ITV producers) and TV content (form TV producers) where **it is the ITV**

system, and NOT the playback device, that retrieves information from a playlist.

Once the ITV system retrieves information from the playlist, this information is inserted

"**into** the broadcast **stream** at the appropriate time as it is broadcast" for reception and

display by a set top box/TV (Newnam, paragraph [0009], lines 5-6; emphasis added)

It is respectfully submitted that AAPA, Newnam, and combination thereof, do not

teach or suggest the present invention as recited in independent claim 1 which, amongst

other patentable features, recites (illustrative emphasis provided):

> a processor [**of the playback device**] configured to receive event
> information **from a playlist** of the data stream; and
> ... wherein the **playlist is not included in the data stream**, and
> the event information is changeable without changing the data stream.

A playback device having a processor configured to receive event information from a playlist of the data stream, where the playlist is not included in the data stream, is nowhere disclosed or suggested in AAPA and Newnam, alone or in combination. At best, the combination of AAPA and Newnam discloses an ITV system that retrieves information from a playlist for insertion in a data stream, where a playback device receives the data stream that includes the inserted information, and the playback device retrieves the inserted information <u>from the data stream</u>, and <u>NOT from the playlist</u>. In AAPA and Newnam, any information retrieved from the playlist is NOT retrieved by a processor of a playback device; rather, information retrieved from the playlist is <u>retrieved by an ITV system</u> for **<u>insertion into</u>** the data **<u>stream</u>** for broadcast to a TV/set top box. Further, in Newman, the playlist **<u>is included</u>** in the data **<u>stream</u>**. In stark contrast, independent claim 1 specifically recites that the "playlist is **<u>not included</u>** in the data stream." (Illustrative emphasis provided)

Accordingly, it is respectfully submitted that independent claim 1 is allowable, and allowance thereof is respectfully requested.

<u>Claims 3-7, 13-17 and 19-20 are said to be unpatentable under 35 U.S.C. §103(a) over AAPA and Newnam</u>.

It is respectfully submitted that claims 3-7, 13-17 and 19-20 should be allowed at least based on its dependence from independent claim 1.

<u>Claim 9 is said to be unpatentable under 35 U.S.C. §103(a) over AAPA and Newnam</u>.

It is respectfully submitted that independent claim 9 should be allowed for the same

reasons discussed above in connection with independent claim 1. In particular, AAPA, Newnam, and combination thereof, do not teach or suggest the present invention as recited in independent claim 9 which, amongst other patentable features, recites (illustrative emphasis provided):

> **starting playback** of the <u>data stream</u> comprising video information or audio information;
> **retrieving** by a processor the event information **from a playlist** of the data stream; and
> ... wherein the **playlist is not included in the data stream**, and the event information is changeable without changing the data stream.

Starting playback of a data stream and retrieving an event information from a playlist, where the playlist is not included in the data stream, is nowhere disclosed or suggested in AAPA and Newnam, alone or in combination. At best, the combination of AAPA and Newnam discloses an ITV system that retrieves information from a playlist for insertion in a data stream, where a playback device receives the data stream that includes the inserted information, and the playback device retrieves the inserted information from the data stream, and NOT from the playlist. In AAPA and Newnam, any information retrieved from the playlist is <u>NOT retrieved from the playlist of a data stream</u> **which is being played back**; rather, information retrieved from the playlist is <u>retrieved by an ITV system</u> for **insertion into** the data **stream** for broadcast to a TV/set top box for **playback after reception** of the data stream. Further, in Newman, the playlist **is included** in the data stream. In stark contrast, independent claim 9 specifically recites that the "playlist is **not included** in the data stream." (Illustrative emphasis provided)

Accordingly, it is respectfully submitted that independent claim 9 is allowable, and allowance thereof is respectfully requested.

<u>Claim 10 is said to be unpatentable under 35 U.S.C. §103(a) over AAPA and Newnam</u>.

It is respectfully submitted that claim 10 should be allowed at least based on its dependence from independent claim 9.

<u>Claims 22 and 23 are said to be unpatentable under 35 U.S.C. §103(a) over AAPA and Newnam</u>.

It is respectfully submitted that claims 22 and 24 should be allowed at least based on its dependence from independent claim 9.

<u>Claim 18 is said to be unpatentable under 35 U.S.C. §103(a) over AAPA and Newnam</u>.

It is respectfully submitted that claim 18 should be allowed at least based on its dependence from independent claim 1.

<u>Claim 21 is said to be unpatentable under 35 U.S.C. §103(a) over AAPA and Newnam</u>.

It is respectfully submitted that claim 21 should be allowed at least based on its dependence from independent claim 1.

<u>Claim 24 is said to be unpatentable under 35 U.S.C. §103(a) over AAPA and Newnam</u>.

It is respectfully submitted that claim 24 should be allowed at least based on its dependence from independent claim 9.
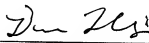
In addition, Appellant denies any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, Appellant reserves the right to submit further arguments in support of the above stated position, should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

CONCLUSION

Claims 1, 3-7, 9-10 and 13-24 are patentable over AAPA and Newnam.

Thus, the Examiner's rejections of claims 1, 3-7, 9-10 and 13-24 should be reversed.

Respectfully submitted,

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CLAIMS APPENDIX

1.(Previously Presented) A playback device for retrieving a data stream comprising video data, the playback device comprising:

a processor configured to receive event information from a playlist of the data stream; and

an application for providing functionality associated with the event information;

wherein the playlist is not included in the data stream, and the event information is changeable without changing the data stream.

Claim 2 (Canceled)

3.(Previously Presented) The playback device as claimed in claim 1, wherein the playlist comprises a mark with a presentation time and wherein the event information is information that the playback device reached the mark presentation time during playback.

4.(Previously Presented) The playback device as claimed in claim 3,wherein the mark is a chapter mark or a skip mark or a link mark.

5.(Previously Presented) The playback device as claimed in claim 3, wherein the

mark comprises a chapter mark or a skip mark or a link mark.

6.(Previously Presented) The playback device as claimed in claim 3, wherein the mark is reserved for use by the application

7.(Previously Presented) The playback device as claimed in claim 6, wherein the mark comprises further information for the application.

Claim 8 (Canceled)

9.(Previously Presented) A method for processing a data stream and event information associated with the data stream, the method comprising the acts of:

starting playback of the data stream comprising video information or audio information;

retrieving by a processor the event information from a playlist of the data stream; and

providing the event information to an application for providing functionality associated with the event information; wherein the playlist is not included in the data stream, and the event information is changeable without changing the data stream.

10.(Previously Presented) The method as claimed in claim 9, wherein the playlist

comprises a mark with a presentation time and that the event information is information that the playback device reached the mark presentation time during playback.

Claims 11-12 (Canceled)

13.(Previously Presented) The playback device of claim 1, wherein the processor is further configured to establish timing correlation between playback of the data stream and the event information retrieved from the playlist.

14.(Previously Presented) The playback device of claim 1, wherein the event information provides the playback device with timing information about when a section of the data stream is to be played back and the processor is further configured to provide the event information to the application in accordance with the timing information for providing the functionality associated with the section in accordance with the timing information.

15.(Previously Presented) The playback device of claim 14, wherein the timing information includes a start of playback of the section, and the processor is configured to provide the event information to the application at the start of the playback of the section so that the application provides the functionality at the start of the playback of the section.

16.(Previously Presented) The playback device of claim 1, wherein the event

information provides the processor with a start time of a section of the data stream to be played back and the processor is further configured to provide the event information to the application at the start time for providing a functionality associated with the section at the start time.

17.(Previously Presented) The playback device of claim 1, wherein the processor is configured to retrieve the event information from the playlist before an event associated with the event information is reached during playback of the data stream.

18.(Previously Presented) The playback device of claim 17, wherein the processor is configured to monitor a playback of the data stream and provide the event information to the application when the event is reached during the playback for providing the functionality associated with the event when the event is reached during the playback.

19.(Previously Presented) The playback device of claim 1, wherein the processor is configured to provide the event information to the application only when a playback of the data stream reached a point in the data stream corresponding to the event information.

20.(Previously Presented) The playback device of claim 1, wherein the application is configured to provide the functionality only when a playback of the data stream reached a point in the data stream corresponding to the event information.

21.(Previously Presented) The playback device of claim 1, wherein the processor is configured to monitor playback of the data stream for providing the application with the event information only when the playback reached a point in the data stream corresponding to the event information so that the functionality is provided by the application at the point without monitoring the playback by the application.

22.(Previously Presented) The method of claim 9, wherein the processor retrieves the event information from the playlist before an event associated with the event information is reached during the playback of the data stream.

23.(Previously Presented) The method of claim 9, wherein the processor provides the event information to the application only when the playback of the data stream reached a point in the data stream corresponding to the event information.

24.(Previously Presented) The method of claim 9, wherein the processor monitors the playback of the data stream for providing the application with the event information only when the playback reached a point in the data stream corresponding to the event information so that the functionality is provided by the application at the point without monitoring the playback by the application.

EVIDENCE APPENDIX

None

RELATED PROCEEDINGS APPENDIX

None